

6/10/73
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Henry Richardson — PETITIONER
(Your Name)

vs.

Myron Batts, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Henry Richardson
(Your Name)

P.O. Box 34550
(Address)

Memphis Tenn, 38184
(City, State, Zip Code)

(Phone Number)

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

QUESTION(S) PRESENTED

Was the Sixth Circuits conclusion correct in concluding that
Petitioner was no-longer in Custody?

Did the Court err in Resufing to rule on a properly presented
Constitutional claim?

Petitioner properly presented that his Federal sentence
was unconstitutionally founded upon void State court
judgments. This was founded upon the promise that a defendant
has an absolute right to effective assistance of counsel.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bousley V. United States, 523 U.S. 694 (1998)	8,110
Bradshaw V. Stumpf, 545 U.S. 183 (2005)	9
Brady V. United States, 379 U.S. 742, 748 (1970)	11
Catz V. Chalker, 142 F. 3d 279 (6th cir. 1997)	8
Hill V. Lockhart, 474 U.S. 52 (1985)	7,11
McCarthy V. United States, 394 U.S. 459 (1969)	10
Pickens V. Howes, 549 F. 3d 377 (6th cir. 2008)	6,11
McLaney V. Bell, 59 S.W. 3d 90-91 (Tenn.2001)	6
McConnell V. State, 12 S.W. 3d 794 (Tenn. 2000)	6
In Re: James, 940 F. 2d At 52 (3d cir. 1991)	8
Santobello V. New York, 404 U.S. 257 261-62 (1971)	11
United States V. Greatwalker, 285 F. 3d 727 (8th cir. 2002)	5

STATUTES AND RULES

Michigan Comp Statute § 768.7b
MSA. 28.1030(2)

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

☐ reported at 17-1710; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix E to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☒ reported at sc 154313; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Michigan Court Of Appeals court appears at Appendix B to the petition and is

☐ reported at 330551; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov 22, 2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Jan 5, 2017. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment Bill of rights Guarantees the right to the effective assistance of counsel. This right is carried through to all critical stages of proceedings even guilty pleas.

Michigan Comp Statute (MCL 768.7b) Statute (MSA 28.1030(2))
Mandates that Sentences for CONvictions of offenses that were committed while on bond to be ran consecutive with eachother.

STATEMENT OF THE CASE

In 1997 petitioner pleaded guilty In State court to an illegal concurrent sentence, Under Michigan Law (M.C.L. 768.7b; M.S.A. 28.1030(23) which requires madatory consecutive sentences while free on bond for a prior felony charge. Unaware at the time, petitioner finished the term of imprisonment under that illegal sentence. After which, petitioner discovered that the Federal sentence was the basis of being enhanced under void State court Judgments. Petitioner on March 11, 2016, filed a delayed application for leave to appeal which was denied on June 15, 2016. Thus Petitioner filed a application with Michigan Supreme court which was denied Jan 5, 2015. Undeterred, petitioner filed in the Distirct court an 2254 challanging the constitutional claim. The District court denied the petition stating lack of jurisdiction, due to petitioner not being "incustody" For his state convictions when he filed the petition. On Nov 22, 2017 the SIxth CIrcuit court of Appeals denied an certificate of Appealability in it's bolierplate order writing by staff attorney's, which is standard protice in courts handling of pro-se petitions. (See Richard Posners: Reforming the Judiciary). THis is the appeal as a direct result from that denial of the Certificate of appealbility from Staff Attorneys.

REASONS FOR GRANTING THE PETITION

This court should grant this petition in order to stop the manifest injustice handed to petitioner, not from the Sixth Circuit Judges, or the District court judges. But their staff Attorneys unwarranted recommendations to deny a pro-se the access to a full and fair consideration of thier constitutional grounds for relief. As evidenced in a recent book from a credible "witness" to this unfair treatment of pro-se's mentioned above. Petitioner is one such pro-se's who was systemictally rubber stamped a denial of a constitutional right. That right was premised under the Due process, bill of rights to be sentenced on materially relaible information. The information that is false is petitioners prior convictions. These convictions are illegal and void. Indeed, in this courts holding in United Student Aid Funds, Inc V. Francisco Espinosa, 559 U.S. 260 (2010) clarified t that a void judgments is a legal nullity. A void judgments in one so affected byu a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. Void actions are thus, without legal effect and are subject to colleteral attack. Thus the Rooker- Feldman doctrine is not a bar to jurisdiction where a Satate court judgment is void, as the judgment, as a matter of law, is a nullity and wiht binding legal effect. Indeed, when a defendant agrees to a sentence taht is not permitted by law, courts have found the plea bargain is illegitimate. United states V. Great-walker, 285 F. 3d 727 (8th cir. 2002). Thus petitioner here had no cause to challenge this eariler, being as though, his counsel, prosecutor, and judge resulted in a plea agreement adopted by the court that was involuntary and in violation of the due process clause

and is void on its face. United States V. Wells, 260 Fed App'x 902 (6th cir 2008). Indeed, a court lacks jurisdiction to impose an agreed sentence that is illegal, even a illegal lenient one. See McConnell V. State, 12 S.W. 3d 794 (Tenn. 2000) See also Watt V. United States , 162 FED App'x 486 (6th Cir. 2006) (under Tennessee law, when the face of the Judgemen or therecord of the underlying proceedings showa that the sentence is illegal, such sentence creates a void judgment, Mclaney V. Bell, 59 S.W. 3d 90-91 (Tenn. 2001)) Such a void judgment is void ab- initio, it is as if the judgments never existed. A void judgment is one from it's inception was a complete nulity and without legal effect. See In Re: James, 1940 F. 2d 46,52 (3d Cir. 1991) See also Pickens V. Howes, No.07-1266 (where a defendant convicted for escape and second degree murder and was sentenced to concurrent sentences when Mich. Comp. Law §768. 7a states that sentences for escape must be served consecutive to all other sentences. The Sixth Circuit in that scenario held the sentence to be illegal and that the defendants guilty plea voilated the due process. In CHambers, Supra, The Michigan Supreme court Stated that is was obvious that the legislature intended to deny the trial court's descretion wiht regard to imposing consecutive sentence which involve major controlled substances which was amended in 1978. Without descretion, the trial court was without Jurisdiction to impose concurrent sentence in this matter. Indeed, in the circuit courts opinion, the court states that , "... even if the sentencing court had been aware that consecuitve sentencing was required, this consideration would not have affected the length of the sentences in the present case". (opinion, pg.3 para. 2) The court went on

to deny the appellants claim to withdraw his plea saying that the claim "is without merit". The appellant here is not arguing that he should have been sentenced to lesser terms, instead he is arguing as outlined in his original post-conviction motion that the court did not have jurisdiction to sentence him to concurrent terms for a felony committed while free on bond for a prior felony charge. See MCL §768.7b; MSA 28.1030(2) of the Michigan Code of Criminal procedure. The State did not have the wuthority nor jurisdiction to offer the appellant a plea agreement that included illegal sentences, which subsequently renders the Appellant's guilty plea involuntary and unintelligently entered. The Petitioner would have went to trial had the true consequences of the guilty plea been made known. See Hill V. Lockhart, 474 U.S. 52, 106.S Ct. 366 (1985). In Hill, it was held that a defendant must be made aware of the true consequences of entering a guilty plea. It is obvious that the defect in the proceedings was such that, it rendered the plea an involuntary and intellegently entered one to a degree that it would be A manifest injustice to allow the conviction(s) to stand now at that the illegallness ahs been made known. Michigan Court RULES §6.508(D)(3)(b)(ii) mandates at least some review of the substance of a claim to ensure that a plea was not an involuntary one to a degree that is would be manifestly unjust to allow the conviction to stand. . This court decision in Rooker-fidelity Trust Co. does not speak to void state judgments other than to observe the difference between "wrong" versus "void". However, this Court clarified in United Students Aide Funds Inc V. Espinosa that a void judgment is a legal nullity. A void judgment is one so affected by fundamental infirmity that the infirmity may be raised even after the judgment becomes final. Thus viod actions are without legal effect and are subject to collatral attack.

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The matter of an illegal sentence created both a void judgment and an involuntary guilty plea in which a controversy exists and a proceeding for relief exists because both a void judgment and an involuntary plea can be raised at anytime. See Bousley v. United States, 523 U.S. 614, 140 L. Ed. 2d 828 (1998); and Catz v. Chalker, 142 F.3d 279 (6th Cir. 1997). An illegal sentence creates a void judgment and a void judgment is one as if the judgment never existed. Such a judgment is void ab initio; it is as if the judgment never existed: "A void judgment is one which, from its inception, was a complete nullity and without legal effect." In re James, 940 F.2d at 52 (3d Cir. 1991); see also United Student Aid Funds, Inc., v. Espinosa, 559 U.S. 260, 270, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) ("A void judgment is a legal nullity"). The concurrent alignment of the sentences in case no. 97-4958 and 97-5554 was amaterial component of the plea agreement. The Court imposed a sentence that was in direct contravention of the mandatory consecutive sentence statute. See MCL 768.7b; MSA 28.1030(2). The Court's imposition of these illegal sentences resulted in the violation of the appellant's due process under the Fifth and Fourteenth Amendments of the United States Constitution. Therefore, the sentence(s) in this matter are illegal and void, and the convictions should be vacated or set aside.

ARGUMENT II

COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY HAVING THE APPELLANT AGREE
TO ILLEGAL SENTENCES

STANDARD OF REVIEW: A question of law is reviewed de novo. In *Re Jude*, 228 Mich. App. 667 (1998)

PRESERVATION OF ERROR: Opinion, page 3

ANALYSIS: In order to establish a violation of the right to effective assistance a defendant must show (1) that counsel's performance was deficient, *Strickland v. Washington*, 446 U.S. 668 (1984); and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

In its Opinion, the Court claims, "...any objection or motion by trial counsel would have been futile." See Opinion, page 3. The Court seems to think that any objection by counsel regarding the Court's lack of jurisdiction to impose concurrent sentences after a defendant has committed another felony while on bond for a previous felony, would be futile. This fails for many reasons. The guilty plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial - - - a waiver of his right to trial before a jury or a judge. Waivers of constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005). A guilty plea procured from a defendant who does not understand and voluntarily waive those rights is procured in violation of the Due Process Clause and is void. *United States v. Wells*, 260 Fed. Appx. 902 (6th Cir. 2008). The appellant was not advised of the true nature of the mandatory consecutive sentences.

Counsel failed to investigate the Court's jurisdiction to impose concurrent sentences in this matter. The Supreme Court held in Wiggins v. Smith, 539 U.S. 510 (2003) that the failure to investigate renders a counsel performance deficient. See Strickland v. Washington, 446 U.S. 668 (1984). Counsel's performance cause the guilty plea to be involuntary and not knowingly entered. The petitioner would have went to trial had he known the true consequences of the guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). In Hill, it was held that a defendant must be made aware of the true consequences of entering a guilty plea. As held in Hill, counsel's performance failed below the standard of Strickland. Therefore, the first prong of Strickland is satisfied.

(PREJUDICE)

In Bousely v. United States, 513 U.S. 614 (1998), the United States Supreme Court held that when the Court, defense counsel and defendant are unaware of the right interpretation of the law, a guilty plea can not be held to be valid because it was not knowing and voluntary. The Court, (State), defense counsel and the defendant was unaware of the mandatory consecutive sentences pursuant to MCL 768.7b; MSA 28.1030(2) of Michigan Code of Criminal Procedure. The petitioner plead guilty based on the State's promise of concurrent sentences. Without the State's promise of concurrent sentences in case no. 97-4958 and 97-5554, the petitioner would not have plead guilty. The promise rendered the guilty pleas involuntary. See McCarthy

v. United States, 394 U.S. 459, 22 L. Ed. 2d 418 (1969)(if a defendant guilty plea is not voluntary and knowing, it has been obtained in violation of Due Process and therefore, is void). See Pickens v. Howes, 549 F.3d 377 (6th Cir. 2008) where the defendant was offered concurrent sentences where Michigan law for escape require mandatory consecutive sentences. The Michigan Court amended the judgment to satisfy state law. The Sixth Circuit Court of Appeals held that the amended sentences could not be left in place. At a minimum, the defendant must have a "sufficient awareness of the relevant circumstances and likely consequences" of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). And a plea cannot be knowingly entered into if the sentences enumerated in the court's written order deviates from the terms reached with the defendant so nothing other than withdrawing the plea is going to work in this matter. See Santobello v. New York, 404 U.S. 257, 261-62 (1971)(The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of those promises must in some way be made known). The Court went on to say that simply extending Pickens sentence by several years to reconcile it with State law that violated his rights under Due Process. The Court held that whether the State did or didn't deliberately withhold information about Michigan law or otherwise mislead the defendant in negotiating a plea makes no difference. Even when the prosecutor is unaware that certain information is false, the Due Process Clause may still be violated. So when a defendant agrees to a sentence that is not permitted by law, courts have found the plea bargain

That Misinformation as to the terms of the plea agreement, that petitioner is entitled to withdraw his plea agreement. At minimum, a defendant must have a sufficient awareness of the relevant circumstances and likely consequences of his plea. The plea is not permitted by law, and is void ab-initio, this court has the inherent authority to correct this injustice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry R. [Signature]

Date: 1-26-18